

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SUSAN MARIE KREBS,

Appellant,

v.

GARY V. SKIBA, TRUSTEE,

Appellee.

Civil Action No. 06-66 Erie

Bankruptcy No. 02-12963

ORDER

McLAUGHLIN, SEAN J.

This order concerns an appeal by Debtor Susan Marie Krebs (“Krebs”) from the Bankruptcy Court’s order dated March 3, 2006. Krebs filed a Chapter 7 bankruptcy in 2005 and, among her assets, listed an IRA account with a balance of \$43,571.96. Citing the United States Supreme Court’s opinion in Rousey v. Jacoway, 125 S.Ct. 561 (2005), Krebs attempted to exempt the balance of the IRA under § 522(d)(10)(E). The Bankruptcy Court, relying upon Clark v. O’Neill (In re Clark), 711 F.2d 21, 23 (3rd Cir. 1983), as well as this Court’s opinions in Skiba v. Auman (In re Auman), 2006 WL 278153 (W.D. Pa. 2006), and Ruetzel v. Roeder (In re Ruetzel), No. 05-300 Erie (W.D. Pa. Feb 13, 2006), denied the exemption. We affirmed the Bankruptcy Court’s order in a written opinion filed on May 10, 2006, and Krebs filed a notice of appeal. On May 19, 2008, the Court of Appeals for the Third Circuit reversed and remanded after determining that the Supreme Court’s opinion in Rousey had indeed impliedly overruled their prior opinion in Clark. See In re: Krebs, C.A.3 No. 06-2959 (3rd Cir. May 19, 2008).

In their decision, the Third Circuit remanded for consideration of whether Krebs can establish “the third requirement of § 522(d)(10)(E), that is, whether and to what extent her right to receive payment under the IRA is reasonably necessary to support her and her dependents.” Id. Accordingly, we remand this matter to the United States Bankruptcy Court for the Western District of Pennsylvania for proceedings consistent with the Third Circuit’s opinion in Case No. 06-2959.

AND NOW, this 2nd day of October, 2008, for the reasons set forth herein,

IT IS HEREBY ORDERED that this matter is REMANDED to the Bankruptcy Court for further proceedings.

/s/ Sean J. McLaughlin
United States District Judge

cm: All counsel of record.____